

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

PATRICIA KAMMEYER, et al.	:	NO. 1:01-CV-649
Plaintiff	:	(Judge Spiegel) (Magistrate Judge Black)
vs.	:	MEMORANDUM IN OPPOSITION TO PLAINTIFF'S MOTION TO AMEND ORDER DOC. 195 FILED BY NON-PARTIES MICHAEL K. ALLEN HAMILTON COUNTY PROSECUTOR, JOHN JAY, INVESTIGATOR AND TERRY GAINES (FORMER ASST. PROSECUTOR)
CITY OF SHARONVILLE, et al.	:	
Defendants	:	

MEMORANDUM

Plaintiff seeks for this Court to "Amend Order Doc. 195" to include Simon L. Leis in a motion filed on December 24, 2004. That Order is subject to an interlocutory appeal filed on December 28, 2004.

NLRB v. Cincinnati Bronze, Inc. 829 F.2d 585, 587 (6th Cir. 1987) explained that the filing of a notice of appeal divests the district court of authority to expand, change or modify the order being appealed. The specific explanation of this principle by the Sixth Circuit is:

Island Creek Coal supports the proposition that, although a district court may not expand upon an order after the notice of appeal has been filed, it may take action to enforce its order in the absence of a stay pending appeal. This rationale is entirely consistent with decisions from other jurisdictions indicating that expansion of a district court's judgment are not permitted while an appeal is pending. See, e. g., *Ced's Inc.*, 745 F.2d at 1095-96 (district court issued new conclusions of law after original judgment was entered and notice of appeal was filed; new judgment was void because district court was without jurisdiction to amend the original order); *Gryar v. Odeco Drilling, Inc.*, 674 F.2d 373, 375 (5th Cir. 1982) (per curiam) (amended judgment entered during pendency of appeal

was void; amended order conflicted with terms of original order on appeal); *McClatchy Newspapers v. Central Valley Typographical Union No. 46*, 686 F.2d 731, 734-35 (9th Cir.) (amended order issued after filing of notice of appeal was void), *cert. denied*, 459 U.S. 1071, 74 L. Ed. 2d 633, 103 S. Ct. 491 (1982).

This Court does not have jurisdiction to take the action which Plaintiffs request.

CONCLUSION

"Plaintiffs' Motion to Amend Order, Doc. 195" should be denied.

Respectfully submitted,

JOSEPH T. DETERS
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CERTIFICATE OF SERVICE

I hereby certify that on January 10, 2005, I electronically filed the foregoing with the Clerk of Courts using the CM/ECF system which will send notification of such filing to the following, and I hereby certify that I have mailed by United States Postal service the document to non CM/ECF participants.

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